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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/818,230	03/27/2001	Taber B. Noble	PD-200288	2218

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THE DIRECTV GROUP INC
PATENT DOCKET ADMINISTRATION RE/R11/A109
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EXAMINER

LONSBERRY, HUNTER B

ART UNIT PAPER NUMBER

2623

DATE MAILED: 09/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/818,230

Applicant(s)

NOBLE, TABER B.

Examiner

Hunter B. Lonsberry

Art Unit

2623

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 03 May 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see below.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.

**HAITRAN
PRIMARY EXAMINER**

Applicant argues that there are significant differences between Internet and television based program guides and it is therefore improper to combine the guides as suggested (page 21).

Regarding applicant's argument, the Examiner notes that claim language requiring display of a menu guide on a television is not present. Claim 46 requires a receiver with a tuner, but it is silent with regards to the display device. Further the Examiner notes that both Boyer and Legall have Internet functionality.

Applicant argues that Legall does not teach performing a search that would result in applicant's invention. Claim 1 requires "presenting media program information regarding media programs consisting of all the media programs scheduled to be available during the first daypart on a channel consisting of the active channel. The combination was made in hindsight (pages 25-26).

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

The Examiner also notes that Boyer teaches the use of a search by channel option (column 9, lines 14-28) a screen shown in figure 12 shows the listings of a number of programs on a single, channel over multiple days. Legall is relied upon for teaching of providing all sorts of additional search options, which make it easy for a user to find a program or programs of interest. Thus it is the combination of references, which teach the applicants invention.

Applicant argues that the 2 hours filters taught by Boyer are not a daypart. And it is clear that all of the media programs in a particular daypart are not shown in the grid (pages 26-29).

The Examiner disagrees. The claims do not require showing 24 hours of programming. Showing 23 hours and 59 minutes of available programs would still be considered a day part. The claims merely require a daypart to be displaying. 2 hours of programming is a part of day. Morning/mid-day etc are parts of day. The broadest possible reasonable interpretation of the claims includes both 2 hours of the day and the selection of a morning/mid-day etc as a daypart. Further the examiner is confused by applicants contention that it is clear that all of the media programs in a particular daypart are not shown in the grid, if one is to modify Boyer to utilize the additional filters taught by Legall.

Further the Examiner notes that all Legall and Boyer are doing are applying various types of filters to a database in order present requested data to the user which read Applicant's invention as presently claimed.

Applicant argues that even if Boyer and Legall together disclose an icon, it is not an navigation icon that indicates when the menu content portion of the menu guide is activated for navigation, all it indicates is that a hyperlink was selected somewhere on the browser (Pages 29-30).

Boyer discloses that the webpages use hypertext links, (column 7, lines 42-53). Thus whenever a link is navigated too the IE menu icon would be momentarily displayed upon activation of the link. The claim is silent as to a navigation icon being only activated when the menu portion is selected.

Applicant argues that there is no teaching whatsoever to determine a first daypart selected from the group comprising a current daypart defined from the time of day and a selected daypart. (page 31).

The Examiner notes the group comprising language. The user in Boyer has the option of selecting a daypart to view or merely viewing the current daypart as determined by the present time. As the user chooses which they wish to view, a determination is made.

Applicant argues that Neither Boyer, Legall or Alexander disclose a channel portion (distinct from the menu guide portion of claim 1, and that portions of the menu guide portion may be highlighted with a cursor. That does not indicate what the active channel is and does not disclose a separate portion indicating the active channel. (pages 32-33).

Claim 3 merely requires the following "wherein the menu guide further comprises a channel portion indicating the active channel." This language does not require a separately displayed portion. A highlighting function clearly distinguishes an active channel from a non-active channel and is therefore a separate portion.

Applicant argues that the advertising content in claims 17-18 requires it to be displayed in a separate portion (page 33).

The claims are silent as to the term separate. Therefore display of ads within a guide is appropriate.